LEE CHEONG IM & ANOR.

v.

PEMUNGUT HASIL TANAH, WILAYAH PERSEKUTUAN

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[CIVIL APPLICATION NO. A 41 OF 1983]
18 MARCH 1985

LAND LAW: *Compulsory acquisition of land by the Government - Land valuation - Date of valuation.*

The applicants were the two land owners with half share each in land lot 1731, in the Mukim of Kuala Lumpur, District of Kuala Lumpur. The land was acquired by the Government and the applicants were each awarded RM71,095.75 as compensation, following the Government valuer's report on valuation of that land at RM70,000 per acre. Being dissatisfied with the award, the applicants filed a written application under Form N to the Collector to refer the matter to the High Court for the determination of the market value of the land.

Held:

[1] The date of valuation for the purpose of evaluating the market value of the land is the date of the *gazette* notification of the land acquisition by the Government under s. 8 of the Land Acquisition Act.

[2] After taking into account other land of comparable value the Collector's award was increased from RM70,000 per acre to RM90,000 per acre.

[Judgment for applicants. Collector to pay costs of this reference to applicants.]

Legislation referred to:
Land Acquisition Act 1960, ss. 8, 4, 39

For the applicants - S. Anusha; *M/s. Shearn, Delamore & Co.*
For the respondent - Tee Geok Hock, FC

[**Editor's note:** Appeal against this judgment is pending in the Federal Court, *vide* Federal Court Civil Appeal No. 313 of 1984.]

JUDGMENT

Eusoff Chin J:

The two land owners Tan Tam Wah and Lee Cheong Im had half share each in land lot 1731, in the Mukim of Kuala Lumpur, District of Kuala Lumpur. This land was acquired by the Government and the Collector of Land Revenue, following the Government valuer's report on valuation of that land at RM70,000 per acre awarded to each land owner RM71,095.75 as compensation. The two land owners were dissatisfied with the award and filed Form N (a written application) to the Collector to refer the matter to the High Court for the determination of the market value of the land. The Collector by Form O referred the matter of the High Court. According to para. 8 of Form O (at encl. "A" in the Collector's bound record), the grounds of the Collector's award are as stated in encl. "B" which contains the notes of hearing before the Collector.

The Collector's notes of hearing were short. What was recorded is that the land in question was bought by the two co-owners on 4 April 1972 for RM25,000. The co-owners applied for conversion (into housing?) but were told that the land had been frozen (by the Government?) two years earlier to their application. According to the Collector's notes of hearing the land had been cleared and planted with trees (?). On these notes, the Collector made an order to the effect that after studying the valuation reports of both the Pengarah Penilaian, Dewan Bandaraya and the valuers for the land owners, he awarded to each co-owner of the land RM71,095.75. When making this award, it appears that the Collector had followed the recommendation of the Pengarah Penilaian, Dewan Bandaraya who had estimated the market value of the land to be RM70,000 per acre.

The whole land was acquired by the Government. The *gazette* notification under s. 8 of the Land Acquisition Act was made on 16 August 1979. This therefore, becomes the material date of valuation for the purpose of evaluating the market value of the land. The land was 1 acre 0 rood 5 poles in area (2.031 acres). It was a freehold land.

Both PW1 (the land valuer for the land owners) and DW1 (for the Collector) described the land as having old rubber trees overgrown with blukar. There was an earth road built along a 20 feet wide road reserve leading to a metal road about 800 meters away. The land was located at 6.5 Kilometer off Jalan Kelang which was the main road linking Kuala Lumpur city centre to Old Town centre, Petaling Jaya. PW1 in his valuation report said that this land was zoned for residential use only. But DW1 disputed this, stating in his report that "it has to be assumed that residential use at a density of 60 persons per acre would have been forthcoming except for the *gazette* notification to acquire." The nearest housing development area was about 1½ miles away.

Both PW1 and DW1 agreed that because the land owners in the surrounding areas had come to know two to three years earlier that the Government was in the process of acquiring lands in that area (see Ex. D4) there had been very few land transactions taking place there, and the prices for a few sales of land there, were far too low than the actual market price so as to render such sales to be unreliable to be taken into account for purpose of estimating the market price of land lot 1731.

PW1 for the land owners quoted two sales of land in the vicinity of lot 1731, i.e., lot 89 Mukim of Sungei Buloh, 153 acres in area, which was sold on 29 September 1979 for RM20,000,000 i.e., approximately at RM3 per square foot. This land was located in the vicinity of Taman Megah. This lot 89 Mukim of Sungei Buloh was under "agriculture." The other sale was of land lot 1488 Mukim and District of Kuala Lumpur. It was 2.5 acres in area. The sale took place about one year earlier, i.e., in 1978. This land was located about 1½ miles away from lot 1731 (the acquired land). Lot 1488 was sold for RM335,301 which came to approximately RM3.04 per square foot.

PW1 also said that the acquired land could be turned into housing since the surrounding lands had already been turned to "housing". He estimated the market value of the land acquired to be RM4 per square foot having taken into account that land lot 1488 was sold at RM3.04 per square foot one year earlier.

DW1 for the Collector agreed that lot 89 Mukim of Sungei Buloh was a large piece of land, being 153 acres in area. He was in no position to confirm whether a larger land than the land acquired could fetch a higher or lower price since the price of a piece of land depends on so many factors including for what purpose the land was to be put to use.

According to DW1, lot 1488 Mukim and District of Kuala Lumpur, even in 1980 was still a vacant land, and full of undergrowth. It was near to Taman Fairview and was accessible by road which was called Lorong Bandaran.

DW1 listed at Appendix "A" to his valuation report the sales of four lots of vacant lands Mukim of Kuala Lumpur, off Kampong Pantai Dalam. But the sales of these four lots which took place between 1 March 1979 to 11 January 1980 could not be relied upon since they were sales of undivided shares. According to DW1 it would be difficult to sell undivided shares in land. Only relatives of the land owners would want to buy undivided shares in land. The four lots of land quoted by DW1 were lots 1734, 2505, 2492 and 5599. I find that notwithstanding what DW1 said about the difficulty of selling undivided shares in land, for one lot i.e., lot 2492, 6/40th share was sold on 1 March 1979 for RM2.50 per square foot which comes to approximately RM108,800 per acre.

DW1 also listed at the same appendix "A" another four lots of lands, i.e. lots 20782, 1617, 3934 and 4565 Mukim and Batu located at Segambut Dalam. These four lots were sold between June 1978 and December 1979. The sale prices ranged form RM65,000 to RM99,338 per acre. DW1 said these lands were rubber small holdings similar in position to the acquired land. There was no road leading to these four lots, and the nearest housing development area was about 1½ miles away.

In my view lot 1488 Mukim and District of Kuala Lumpur can be used as a comparable. It had an acreage of 2.5 acres. But it was near Taman Fairview which was developed between 1960 to 1970. It was accessible by a road, Lorong Bandaran from Jalan Kelang. Therefore compared to this lot 1488, the acquired land would be in an inferior position and quality so that I am of the view that its value would be about 2/3rd that of lot 1488.

The four lots in Mukim of Batu, in Segambut Dalam can also be used as comparable for the purpose of valuation of lot 1731 (the acquired land). But whereas these four lots are surrounded with rubber small holdings and rubber estates - (see Ex. D5) there is no evidence that the acquired land was so surrounded. In fact PW1 said that three areas (which were in the vicinity of the acquired land) where PW1 had marked with crosses on Ex. P1 had been turned into housing development. The acquired land had good housing potential. DW1 himself said in evidence that the acquired land had few lots around it planted with rubber. Whereas the acquired lot had an earth track built on a 25 feet wide road reserve, there was no evidence that the four lots of land in Segambut Dalam had any road or earth tracks leading to them. Therefore in my view, although the acquired lot was under rubber, it stood superior in quality and position to the four lots in Segambut Dalam. I think DW1 is also of the same view because he had valued the acquired land at RM70,000 per acre at the material date of his valuation which he gave in his report and in his evidence as 25 June 1976 (not 16 August 1979).

As regards the date of valuation, DW1 had used 25 June 1976 as the material date. He said this was because he had followed G.N. 3048 dated 25 June 1976 (when the notification under s. 4 of the Land Acquisition Act was gazetted). However this notification was not followed with a notification under s. 8 of the Act within twelve (12) months so that date, 25 June 1976, is not the correct date for purpose of valuation, (see para) 1(1) of the First Schedule to the Act). The *gazette* notification under s. 8 of the Act was made on 16 August 1979 *vide* G.N.3673.

DW1's valuation of the acquired land was what he concluded the land was worth on 25 June 1976, i.e., some three years earlier to the actual or material date of valuation of the land under the law. DW1 had valued that land to be RM70,000 per acre. Although the Collector in his notes of hearing had referred to G.N.3673 dated 16 August 1979, I believe he had overlooked the fact that DW1 had in his report taken 25 June 1976 as the material date of valuation of the acquired land.

For the reasons I have stated above I think PW1's valuation of the acquired land at the material date to be RM4 per square foot would be too high. I have already stated above that I consider 2/3rd of the sale price of lot 1488 would be reasonable market price for the acquired land.

I think DW1's valuation of the acquired land as it was worth on 25 June 1976 was reasonable. But on the material date of valuation (16 August 1979), the acquired land would have appreciated in value. Lot 4565 Mukim of Pudu, at Kampong Segamat Dalam was sold in September 1979 for RM99,338 per acre. I would therefore consider RM90,000 per acre for the acquired land at the material date to be its fair market value, and this works out to be RM2.06 per square foot.

I would therefore increase the Collector's award from RM70,000 to RM90,00 per acre. There shall be interest at 6% per annum to be paid by the Collector on the excess from the date of Form K to date of payment. The Collector shall pay costs of this reference to the applicants. I also order the deposit paid under s. 39 of the Land Acquisition Act to be returned to the applicants.

Also found at [1985] 2 CLJ 140